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Before the
Federal Communications Commission
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Implementation of the Cable
Consumer Protection and Competition
Act of 1992

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MM Docket 92-259

**REPLY COMMENTS OF THE
NEW JERSEY BROADCASTERS ASSOCIATION
AND
OKLAHOMA ASSOCIATION OF BROADCASTERS**

SCOPE OF RETRANSMISSION CONSENT

The New Jersey Broadcasters Association and the Oklahoma Association of Broadcasters, hereby respectfully submit reply comments in response to the Commission's Notice of Proposed Rule Making ("NPRM"), FCC 92-499, released November 19, 1992. Specifically, these reply comments address the issue of the scope of the revised retransmission consent provisions as raised in Section IV of the NPRM.

The Cable Act of 1992 serves to amend the Communications Act of 1934 by including revised provisions surrounding the retransmission of broadcast signals by cable systems and various multichannel video programming providers. In Paragraph 43 of the NPRM, the Commission seeks comment on whether Congress intended the revised retransmission consent requirements of the 1992 Act to be applicable to the use of both broadcast radio and television station signals. While it is true that the Commission has been instructed to undertake a rulemaking proceeding governing retransmission consent for television stations, it is

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our position that the revised rules should justly apply to broadcast radio stations as well.

PARTIES COMMENTING ON RETRANSMISSION CONSENT ISSUE

On January 4, 1993 the Commission accepted Comments in response to the NPRM issued on November 19, 1993. Among those filing comments was the National Association of Broadcasters ("NAB"). The issues raised by the NAB in connection with retransmission consent are incorporated and supported herein. The commenting parties filing in opposition to the applicability of retransmission consent to radio stations included the National Cable Television Association ("NCTA") as well as Time Warner Entertainment and Liberty Cable Company.

REASONS FAVORING RETRANSMISSION CONSENT OF RADIO STATIONS

The retransmission consent and must carry provisions of the new cable act entitle television broadcasters to either (1) demand payment from cable systems that carry the station's signal voluntarily or, (2) to compel carriage of their station's signal on local cable systems. Although the must carry regulations apply only to television stations, the underlying arguments surrounding retransmission consent can be applied equally to both radio and television broadcast stations.

As expressed in Senate Report No. 102-92, broadcasting presently remains the most popular form of programming available. It follows, therefore, that a substantial portion of the fees

paid by subscribers to cable operators can be attributed to the broadcast signals being retransmitted. Cable operators should not be allowed to use these signals without first seeking the permission of the originating broadcaster or having to compensate the broadcaster for the value of its product. This of course is the underlying premise to the revisions made to Section 325 of the Communications Act. It is our view that the revisions to Section 325 unquestionably establish the right of all broadcast stations to control the use of their signals by cable systems or other multichannel video program distributors. Radio broadcasters as well as television broadcasters should be permitted to negotiate with cable operators over the compensation they will receive for permitting cable systems to carry their original programming. It is both inequitable and unconscionable for the Federal Communications Commission to exclude radio broadcasters from the benefits of signal retransmission by cable operators. Such a policy would promote favoritism and is contradictory to established Commission policy of promoting fair competition.

Looking to the future, as cable systems expand their channel capacity, the unauthorized retransmission of any broadcast signal could have profound affects on both the radio and television industry. The efforts of independent radio broadcasters attempting to provide original programming and service to the public could be greatly undermined by the profiteering of the expanding multichannel video programmers.

Congress' intent that the retransmission consent provisions apply to both radio and television stations is evidenced by the clear and unambiguous language of Section 325(b)(1) of the revised Act which states in part (emphasis added):

"... no cable system or other multichannel video programming distributor shall retransmit the signal of a broadcast station, or any part thereof..."

Clearly, the statutory language of Section 325(b)(1), as amended, is not expressly limited to television stations, but encompasses all broadcast stations in general. Further, new Section 325(b)(2) enumerates four exceptions to the requirement that multichannel video programmers obtain consent from the broadcast stations whose signals they retransmit. It should be noted that, at no point in Subsection (b)(2) are radio broadcast stations directly identified. It is our belief that if Congress had intended radio broadcasters to be excluded from the retransmission consent provisions, it would have been so specified in this section.

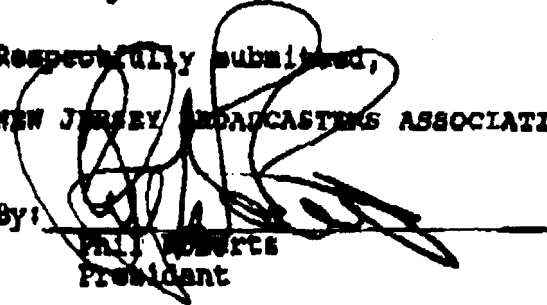
In its Comments, NCTA argues against the applicability of retransmission consent to radio stations based on the idea that Section 325 is expressly geared toward television broadcasters electing either retransmission consent or must carry rights. We feel that argument itself justifies the inclusion of radio broadcast stations. Indeed, Congress' requirement that the Commission implement a rulemaking proceeding with respect to the application of the new retransmission provisions to television

stations should not be construed to indicate that the provisions do not apply to radio stations. In directing the Commission to conduct a rulemaking with specific reference to television signals, Congress' goal was to ensure that the new retransmission consent provisions function properly in conjunction with the revised signal carriage provisions of Section 614. Since no similar provisions exists for radio stations, Congress saw no reason to qualify their inclusion in the revised rules. As argued by the NAB, it was not the objective of Congress to encumber to the Commission with an additional and unnecessary rulemaking in the absence of the need for extensive new rules.

SUMMARY

The purpose of this proceeding is for the Commission to establish and implement effective procedures for carrying out the new must carry and retransmission consent provisions as outlined in the Cable Television and Consumer Protection and Competition Act of 1992. With respect to the issue of retransmission consent, we strongly believe, for all of the foregoing reasons, that it was the intent of Congress to apply the revised provisions of Section 325 of the Communications Act to all broadcast stations, not solely television stations, and that when the new retransmission consent provisions become effective in October 1993, all cable systems and multichannel video programmers carrying radio station signals should be required to obtain prior consent.

Respectfully submitted,
NEW JERSEY BROADCASTERS ASSOCIATION

By: 
Phil Roberts
President

OKLAHOMA ASSOCIATION OF BROADCASTERS

By: _____
Carl C. Smith
Executive Director

January 19, 1993

Respectfully submitted,

NEW JERSEY BROADCASTERS ASSOCIATION

By: _____
Phil Roberts
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Executive Director

January 19, 1993

CERTIFICATE OF SERVICE

I, Tracey Westbrook, do hereby certify that a true and correct copy of the foregoing Reply Comments was served by first-class United States mail, postage prepaid, this 19th day of January, 1993, upon the following individuals:

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